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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

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97-79  
ORIGINAL

July 16, 1997

Hon. John M. Frysiak  
Office of Administrative Law Judge  
Federal Communications Commission  
2000 L Street, NW Rm 233  
Washington, DC 20554

Re: Proposed Settlement of Mutually Exclusive Applications:  
Pataphysical Broadcasting Foundation (File No. BPED-940316MB)  
Central Coast Educational Broadcasters (File No. BPED-940606MB)

Dear Judge Frysiak:

Transmitted herewith and jointly filed on behalf of Pataphysical Broadcasting Foundation ("Pataphysical") and Central Coast Educational Broadcasters ("Central") is a Joint Request for Approval of Settlement Agreement, Motion for Leave to Amend and Amendment of Central's pending application (File No. BPED-940316MB).

The parties respectfully request suspension of the established hearing dates pending FCC approval of the proposed settlement between the parties.

If you have any questions concerning Central's application please Alan Campbell at (202) 728-0400, if you have questions concerning Pataphysical's application please contact John Crigler at (703) 841-0606.

Very truly yours,



Tara S. Becht

Encl.

cc: James W. Shook, Esq. (w/Encl.) Rm. 7218  
Mark L. Berlin, Esq. (w/Encl.) Rm. 7218  
John Crigler, Esq.

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JUL 16 1997

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In re Applications of	)	MM Docket No. 97-79
	)	
PATAPHYSICAL BROADCASTING	)	File No. BPED-940316MB
FOUNDATION	)	
San Ardo, California	)	
Req: 91.7 MHz, Channel 219B	)	
2.7 kW (V); 543 meters	)	
	)	
CENTRAL COAST EDUCATIONAL	)	File No. BPED-940606MB
BROADCASTERS	)	
King City, California	)	
Req: 91.3 MHz, Channel 217A	)	
0.900 kW (V); -117 meters	)	
	)	
For Construction Permit for a New	)	
Noncommercial Educational FM Station	)	

To: Hon. John M. Frysiak  
Administrative Law Judge

**JOINT REQUEST FOR APPROVAL OF SETTLEMENT AGREEMENT**

Pursuant to Section 73.3525 of the Commission's rules, 47 C.F.R. § 73.3525, Pataphysical Broadcasting Foundation ("Pataphysical") and Central Coast Educational Broadcasters ("Central"), by their attorneys, respectfully request approval of the attached Settlement Agreement (Exhibit 1) that will terminate this proceeding and result in the approval of the above referenced applications. In support, the parties state as follows:

**Introduction**

1. Pataphysical and Central are applicants for new noncommercial educational-FM stations ("NCE-FM") in San Ardo, California and King City, California, respectively. By Hearing Designation Order ("HDO") released February 24, 1997, the Commission designated the above-captioned applications for hearing on a Section 307(b) issue, where it will compare San Ardo and

King City's respective needs for the proposed new NCE-FM service rather than evaluate Pataphysical or Central's comparative qualifications.<sup>1</sup> The applicants propose to operate facilities on second adjacent channels (Central proposes to operate on Channel 217 and Pataphysical proposes to operate on Channel 219) resulting in Central's 80 dBu contour being completely encompassed by Pataphysical's 60 dBu contour. As a result, Pataphysical will encounter prohibited contour overlap around Central's tower (*i.e.*, within Central's 80 dBu contour). However, relocation of Central's tower site to a sparsely populated area, as proposed herein, would effectively eliminate the interference to the reception of Pataphysical's signal by potential listeners.

2. As outlined below, the applicants have reached a Settlement Agreement, which, if accepted by the Commission, will allow for the termination of the hearing proceeding and best serve the public interest. Central and Pataphysical jointly request a waiver of Section 73.3522 of the Commission's rules, 47 C.F.R. § 73.3522, and seek permission to amend Central's application, although it has been designated for hearing, to change Central's tower location. This amendment will dramatically reduce the degree of second adjacent channel contour overlap to Pataphysical's proposed service contour. In addition, the parties request a waiver of Section

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<sup>1</sup> Although the Commission has partially frozen comparative hearings for mutually exclusive NCE-FM applications until it has adopted new or revised NCE-FM comparative criteria and the Commission has stated that it would not issue decisions in pending hearing proceedings involving competing applications where it would be necessary for the Commission to base its decision on the existing comparative criteria for NCE-FM applicants, the Commission may proceed with hearings for consideration of mutually exclusive NCE-FM applications where consideration of the provisions of Section 47 U.S.C. § 307(b) of the Communications Act of 1934 could prove dispositive. See, *In re, Reexamination of the Comparative Standards for New Noncommercial Educational Applicants*, 10 FCC Rcd. 2877 (March 17, 1995); *In re, Santa Monica Community College District*, Memorandum Opinion and Order, 11 FCC Rcd. 1123 (February 1, 1996).

73.509 of the Commission's rules, 47 C.F.R. § 73.509, in order to accommodate the continued overlap of Central's 80 dBu contour and Pataphysical's 60 dBu contour.

**Good Cause Exists for Acceptance of  
Central's Postdesignation Amendment**

3. Pursuant to Section 73.3522(b) of the Commission's rules, the Commission may accept postdesignation amendments upon a showing of "good cause" for such relief and if the parties demonstrate that the postdesignation amendment is "necessitated by events which the applicant could not reasonably have foreseen . . . and the amendment does not require an enlargement of issues or the addition of new parties to the proceeding." 47 C.F.R. §§ 73.3522(b)(i) and (b)(ii).

4. In *Yolo County*,<sup>2</sup> a case with facts similar to the one at hand, the administrative law judge found good cause to accept and grant postdesignation amendments that involved a change in frequency as well as a change in transmitter location without returning the applications to the processing line.<sup>3</sup> In *Yolo County*, four parties, California State University ("Cal State"), Sacramento City Unified School District ("School District"), Yolo County Public Radio ("Yolo") and Family Stations' Inc. ("Family") filed mutually exclusive applications for new NCE-FM service. Under the terms of a settlement agreement, Cal State's application for Channel 205B and the School District's application for Channel 209 would be granted as filed, Yolo would

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<sup>2</sup> *In re, Yolo County Public Radio*, Memorandum Opinion and Order, MM Docket No. 89-111 (ALJ, 1990) (Attached as Appendix A).

<sup>3</sup> *See also, In re, Cabrini College*, Memorandum Opinion and Order, MM Docket No. 89-309, FCC 89M-2039 (Aug. 7, 1989), where the Commission accepted, processed and granted two applications where one such application required a postdesignation amendment and a waiver of Section 73.509 of its rules without returning it to the processing line.

dismiss its application and Family would file a postdesignation amendment to its application for Ione, California, proposing to move from Channel 202A to 201A. Family would also file a postdesignation amendment to its application for North Highlands, California proposing to move its transmitter to a new site, reduce power and install a direction antenna. Family's North Highlands amendment also required a waiver of Section 73.509 of the Commission's rules as there would be prohibited overlap between the 80 dBu contour of Family on Channel 207 and the 60 dBu contour of Cal State on Channel 205; the prohibited overlap resulted in received interference to Cal State in a 96 square kilometer area (representing 2.4 percent of the total area within Cal State's proposed 60 dBu service contour).

5. In addition to finding good cause to accept Family's proposed postdesignation amendments, the administrative law judge also granted the petition for waiver of Section 73.509 of the Commission's rules and granted the parties' Joint Request for Approval of Settlement. The administrative law judge found good cause existed because the case did not involve adjacent or co-channel interference, did not result in an overall reduction in service to the public and would resolve the application conflicts and avoid a hearing. Therefore, the administrative law judge found good cause existed to accept and grant Family's amendments, grant the parties' request for waiver of Section 73.509 of the Commission's rules and approve the Joint Request for Approval of Settlement Agreement.

6. In the case at hand, there is "good cause" to accept and grant Central's postdesignation amendment as the amendment will permit the prompt authorization of two new NCE-FM services in San Ardo and King City and will avoid the expense and delay of a hearing. Central's amendment is being made solely to reduce the potential overlap of two second adjacent

NCE-FM stations and therefore will not result in the loss of NCE-FM service to the area of overlap, but will result in the replacement of Pataphysical's signal with Central's signal.<sup>4</sup> The amendment will not enlarge the issues or add new parties and is the essential element of the parties' settlement. In order to resolve the conflict between these two pending applications, the parties respectfully request a waiver of Section 73.3522(b) of the Commission's rules and request the Commission accept, process and grant Central's amendment to its application.

**Waiver of Section 73.509**

8. Under Section 73.509 of the Commission's rules, applications for new NCE-FM stations, other than Class D stations, will not be accepted if the proposed operation would involve an overlap of certain signal strength contours with another station. While grant of Central's amendment would still involve overlap of its 80 dBu contour (45.63 square kilometers) with Pataphysical's 60 dBu contour (8,472.40 square kilometers), the overlap of Central's 80 dBu contour represents only 0.54 percent of Pataphysical's 60 dBu contour, a *de minimis* overlap. Prior to the proposed amendment, Central's 80 dBu service contour covered a 17.91 square kilometer area that included 7,634 people. Central seeks to relocate its transmitter to the foothills northeast of King City (*See* Map at Exhibit E-6 of Central's amendment) which would mean that as amended, Central's 80 dBu contour would cover a slightly larger area, 45.63 square kilometers, but, the area is virtually unpopulated, including only 11 houses.

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<sup>4</sup> *See infra* para. 10.

9. In the past, the Commission has granted waivers of Section 73.509 in similar situations that involve "donut interference."<sup>5</sup> For example, *Cabrini College*<sup>6</sup> dealt with four applications for new NCE-FM stations in the Philadelphia area (Cabrini College ("Cabrini"), Villanova University of the State of Pennsylvania ("Villanova"), Bux-Mont Educational Radio Association ("Bux-Mont"), and the Trustees of the University of Pennsylvania ("WXPB")). The Commission approved amendments to Cabrini, Bux-Mont and Villanova's engineering proposals and a relocation of WXPB's transmitter, as part of a full hearing settlement. Under the amendments, Cabrini and Villanova, which sought a time sharing operation, agreed to specify operation on Channel 206A rather than Channel 203A, Bux-Mont agreed to change its proposed operation to Channel 205A rather than 203A and WXPB would remain on channel 203A as proposed. However, the amendments did not eliminate all overlap; some prohibited contour overlap remained resulting in "donut interference" to WXPB from both Bux-Mont and the Cabrini and Villanova share-time proposal. The transmitter sites proposed for Bux-Mont on Channel 205A, and Cabrini/Villanova on Channel 206A were wholly encompassed by the 60 dBu contour of WXPB's proposed operation on Channel 203B. The Commission approved the requested waiver of Section 73.509 (along with various amendments to the applications), noting that:

the benefit of authorizing new and improved service outweighs the limited interference which will result. Significantly, none of the proposals will result in interference to a non-party to this proceeding, and each of the parties to this proceeding has agreed to accept interference as a condition of receiving grant. Moreover, as noted by the applicants, no one currently receiving service will

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<sup>5</sup> Donut interference refers to a situation where the transmitter site for one station is encompassed within the 60 dBu contour of another station.

<sup>6</sup> *Supra* note 3.

lose service as a result of acceptance of the applicants' amendments."<sup>7</sup>

10. In *Educational Information Corporation*, 6 FCC Rcd 2207 (1992), the Commission again granted waivers of Section 73.509 where three stations would experience prohibited contour overlap due to operations on second adjacent channels, since the interference would be minor and the benefit of increased NCE-FM service heavily outweighed the potential for interference in very small areas. In *Educational*, the Commission reexamined its waiver policy in the limited area of proposed second or third adjacent channel overlap of NCE-FM stations and stated that:

overlap of co-channel or first adjacent channel signals is a more serious matter since the interference that may occur results in the loss of service over a wide area. Second or third adjacent channel overlap may result in the replacement of one signal by another (not the complete loss of service) and is confined to a very small area around the transmitter of the interfering station.<sup>8</sup>

The Commission also stated that it is "inclined to grant waivers of second and third adjacent channel overlap . . . [where] the benefit of increased noncommercial educational service so heavily outweighs the potential for interference in very small areas."<sup>9</sup>

11. In the case at hand, as in *Cabrini* and *Educational*, the benefits of providing new and improved service to San Ardo and King City outweigh the limited prohibited overlap that would result; 0.54 percent of Pataphysical's 60 dBu contour and a minuscule number of people in an area that is rural and sparsely populated containing only 11 houses. The Central/Pataphysical proposal would not result in interference to a non-party to this proceeding

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<sup>7</sup> *Cabrini College* at page 2.

<sup>8</sup> *Educational Information Corporation* 6 FCC Rcd. at 2208.

<sup>9</sup> *Id.*



and both Central and Pataphysical agree to accept the proposed contour overlap as a condition of receiving a grant. In addition, the overlap allowed would not result in a loss of any present service to any listener since new station proposals are involved and will avoid a costly and unnecessary hearing. Therefore, granting the requested waiver would further the Commission's policies, would result in the most efficient use of scarce frequency spectrum and would serve the public interest.

### **The Settlement Agreement**

12. The attached Settlement Agreement is contingent upon acceptance and grant of Central's amendment as well as grant of the requested waivers of Sections 73.3522(b) and 73.509 of the Commission's rules. The Settlement Agreement is subject to the prior consent of the Commission, represents the only agreement between the parties hereto, and complies with Section 73.3525 of the Commission's Rules. As part of the Settlement Agreement, the parties seek to amend Central's application, seek approval of Central and Pataphysical's applications, and seek waivers of Sections 73.3522(b) and 73.509 of the Commission's rules. Other than as set forth in the Settlement Agreement, no consideration has been paid or promised to be paid to or by Central or Pataphysical, either directly or indirectly.

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Conclusion

WHEREFORE, the parties respectfully request approval of the Settlement Agreement, acceptance of Central's amendment, and grant of the applications of Pataphysical and Central.

Respectfully submitted,

Central Coast Educational Broadcasters

By: 

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(703) 841-2345

Its Attorney

July 16, 1997

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

FCC 90M-477

In re Applications of	)	MM Docket No. 89-111	1900
	)		
YOLO COUNTY PUBLIC RADIO	)	File No. BPED-851217MG	
West Sacramento, California	)		
	)		
SACRAMENTO CITY UNIFIED SCHOOL DISTRICT	)	File No. BPED-860226MC	
Sacramento, California	)		
	)		
CALIFORNIA STATE UNIVERSITY, SACRAMENTO	)	File No. BPED-860613MA	
Sacramento, California	)		
	)		
FAMILY STATIONS, INC.	)	File No. BPED-861023MB	
Ione, California	)		
	)		
FAMILY STATIONS, INC.	)	File No. BPED-861023MF	
North Highlands, California	)		
	)		
For Construction Permit for a New	)		
Non-Commercial Education FM Station	)		

MEMORANDUM OPINION AND ORDER

Issued: March 7, 1990; Released: March 9, 1990

1. Under consideration are the following:

Joint Petition for Waiver of Section 73.509 of the Commission's Rules, filed December 22, 1989, by Family Stations, Inc. ("Family") and California State University, Sacramento ("University");

Petition for Leave to Amend, filed December 22, 1989 on behalf of Family Stations, Inc.;

Amendment by Family Stations, Inc. to Application BPED-861023MB, Ione, California, filed December 22, 1989;

Amendment by Family Stations, Inc. to Application BPED-861023MF, North Highlands, California, filed December 22, 1989;

Joint Request for Approval of Settlement Agreement, filed December 22, 1989, by the University, Sacramento City Unified School District ("School District"), Family, and Yolo County Public Radio ("Yolo");

Mass Media Bureau's ("Bureau") Opposition to Petition for Leave to Amend and Joint Petition for Waiver of Section 73.509 of the Commission's Rules, filed January 26, 1990;

Mass Media Bureau's Comments on Joint Request for Approval of Settlement Agreement, filed January 3, 1990; and

Joint Reply to Opposition of Mass Media Bureau, filed February 14, 1990, by California State University, Sacramento ("University") and Family Stations, Inc. ("Family").

2. The settlement agreement provides for the dismissal with prejudice of Yolo's application for a stated monetary consideration to be paid by the University and Family. Family has concurrently filed a petition for leave to amend both its North Highlands application (to eliminate the mutual exclusivity between that application and the School District) and its Lone application (to eliminate the mutual exclusivity between that application and the University). Family and the University have concurrently petitioned for a waiver of the adjacent channel signal strength overlap requirements of Section 73.509 of the Commission's rules. It is alleged that a grant of the waiver would resolve the mutual exclusivity between Family's amended North Highlands application and the University, thereby permitting a grant of both applications. Approval of the settlement agreement and grant of the filed Joint Petition for Waiver and Petition for Leave to Amend, will obviate the need for a protracted administrative proceeding and will result in the expeditious implementation of local non-commercial radio service to the residents of Sacramento, North Highlands and Lone, California. Service to North Highlands and Lone, California would be the first local FM radio service to each area.

3. The settlement agreement comports with the requirements of Section 73.3525 of the Commission's Rules. Specifically, the parties have all completed the declarations required by Section 73.3525 of the Commission's Rules. The settlement and declarations enumerate the public interest reasons for settlement and establish that Yolo, the sole dismissing applicant, did not file its application for the purpose of reaching or carrying out a settlement agreement.

4. Family proposes to amend its Lone application by specifying operation on Channel 201A in lieu of Channel 202A. Family also proposes to amend its North Highlands application by specifying a new transmitter site, reducing effective radiated power, and utilizing a directional antenna. The amendment to Family's North Highland's application will create a situation involving so-called "donut interference," in which the transmitter site for the undesired station is encompassed within the 60 dBu contour of the desired station. Specifically, the 80 dBu contour of Family's amended proposal for



Channel 207 at North Highlands will lie almost entirely within the 60 dBu contour of University's proposal on Channel 205B at Sacramento. According to Family and the University, the overlap area would encompass 96 square kilometers or approximately 2.4 percent of the total area within the University's 60 dBu contour. The population within the overlap area would be approximately 8,791 persons or 1.0 percent of the total population within the University's 60 dBu contour. There will be no overlap of the University's 80 dBu contour by Family's North Highlands amended 60 dBu contour. Existing FM stations will receive no interference. Family and the University further maintain that approval of the settlement agreement would allow the inauguration of four new non-commercial FM services in the Sacramento area serving in the aggregate more than 1.3 million persons. Additionally, these service gains will be effected, according to Family, without any loss of existing service.

5. The Bureau opposes the joint waiver request on the grounds that the movants present no extraordinary reasons to justify a waiver of the Commission policy of avoiding the creation of "donut interference." The Bureau distinguishes the authority cited by the movants, Applications of Cabrini College, MM Docket 89-309, (ALJ, August 7, 1989), stating that the Cabrini case involved the provision of new services to more than 2.2 million persons in the highly congested northeast corridor (about twice the amount herein). Further, the Bureau states that there has been no demonstration that the parties are so deadlocked in their proposals that a resolution consistent with the Commission's rules and policies cannot be worked out. It is for these reasons the Bureau believes that the settlement agreement is inconsistent with the public interest.

6. As noted in the joint petition, in Cabrini, the Bureau supported a waiver of Section 73.509 of the Rules because the resulting "donut" interference would not cause loss of any present service and would enhance TV Channel 6 protection through co-location of the antennas of WXPB(FM) and WPVI(TV). Similarly, in the instant case, there would also be no loss of any present service (only new service is involved) and co-location of the antennas of the University and KVIE-TV will enhance TV Channel 6 protection for the public. Moreover, as is set forth in the supporting Engineering Statement (Attachment C) of John Kean, the non-commercial FM frequency spectrum in the Sacramento area will be fully saturated with the grant of the applications of the University, Family and Sacramento City Unified School District; because of TV Channel 6 protection requirements (Section 73.525) and the prohibited overlap requirements of Section 73.509 of the Rules, future new service is unlikely in the event a waiver of Section 73.509 is denied.

7. The joint petitioners point out that the dissimilarities between Cabrini and the instant situation also support a waiver of Section 73.509 of the Commission's Rules. In Cabrini, Station WXPB proposed an upgrade of facilities, i.e., change in frequency from Channel 205A to Channel 203B and a modification in facilities from 1.90 kW effective radiated power (ERP) at 85 meters height above average terrain (HAAT) to 3.1 kW at 332 meters HAAT. Also, the transmitter site of both a proposed Sellersville, Pennsylvania station (Channel 205A) and a proposed Radnor Township/Villanova, Pennsylvania station (206A) were wholly encompassed by the 60 dBu contour of WXPB's proposed facilities. Joint petitioners then maintain that there were two instances of "donut" interference



to WXPB whereas in the instant case there is only one instance of "donut" interference to the University. Moreover, it is claimed that WXPB proposed an upgrade in facilities and could have avoided "donut" interference by using a directional antenna or a reduction in power, options which are not really available to the University.

8. Joint petitioners also state that Cabrini also required an additional waiver of Section 73.509 of the Rules to permit co-channel interference between Station WWFM (Channel 206A), Trenton, New Jersey and the proposed operation of the Radnor Township/Villanova station on Channel 206A. The instant case does not appear to involve any adjacent or co-channel interference which, can result in an interference area where service is lost to both stations rather than merely to one station as is the case here.

9. The joint petitioners also argue that in order to avoid "donut" interference, there are arguably two possible options. First, the University could reduce its 60 dBu contour through use of a directional antenna or a reduction in effective radiated power so that Family's North Highlands transmitter would be located beyond the University's 60 dBu contour. Secondly, Family could locate its proposed North Highlands transmitter so that it is outside of the University's protected 60 dBu contour. The Engineering Statement notes that either option would result in an overall reduction in service to the public vis a vis granting a waiver of the "donut" interference policy. As a hypothetical, if the University were to avoid "donut" interference by contracting its service area to conform with the contour overlap requirements of Section 73.509 of the Rules, this would result in a reduction of the currently proposed interference free contours of the University from 3,823 square kilometers and 841,198 people to 2,280 square kilometers and 546,624 people -- a difference of 1,543 square kilometers and 294,574 people or a 42 percent reduction in area and a 35 percent reduction in people. This contrasts unfavorably with the currently proposed "donut" interference area of the University, comprising only 96 square kilometers and 8,791 people or 2.4 percent of its proposed service area and 1.0 percent of the proposed population, which would not receive new service due to interference received from Family's proposed North Highlands station.

10. On the other hand, the hypothetical relocation of Family's North Highlands transmitter site beyond the University's 60 dBu contour and in conformance with the contour overlap requirements of Section 73.509 of the Rules would result in a reduction in population served from the current 325,377 persons to 103,958 persons -- a reduction of 221,419 persons or 25 times the number of people within the current overlap area for which a waiver is requested.

11. Lastly, the joint petitioners note that the applicants in this proceeding have been attempting to resolve this mutually exclusive situation since April 14, 1988 when they were directed by the FM Branch to explore options which would avoid a comparative proceeding. For the better part of two years, the applicants have acted diligently and in good faith to resolve application conflicts, avoid a protracted and expensive comparative proceeding and initiate new service to the public. It is maintained that the proposed settlement,





related amendments and waiver request represent the best efforts of the applicants and comport with the public interest and are deserving of the Bureau's support.

12. In light of the foregoing, it is concluded that good cause exists for and that public interest would best be served by the grant of the submitted petitions.

Accordingly, IT IS ORDERED that the Joint Petition for Waiver of Section 73.509 of the Commission's Rules, filed December 22, 1989, by Family Stations, Inc. and California State University, Sacramento; IS GRANTED, the Petition for Leave to Amend, filed December 22, 1989 on behalf of Family Stations, Inc.; the Amendment by Family Stations, Inc., Ione, California, filed December 22, 1989; and the Amendment by Family Stations, Inc., North Highlands, California, filed December 22, 1989 ARE GRANTED and the amendments ARE ACCEPTED.

IT IS FURTHER ORDERED that the application of Yolo County Public Radio (File No. BPED-851217MG) IS DISMISSED with prejudice; the Joint Request for Approval of Settlement Agreement, filed December 22, 1989 IS GRANTED; the Agreement IS APPROVED; the applications of Sacramento City Unified School District (File No. BPED-860226MC), California State University, Sacramento (File No. BPED-860613MA), Family Stations, Inc., Ione, California, (File No. BPED-861023MB), as amended, Family Stations, Inc., North Highlands, California (BPED-861023MF) as amended, ARE GRANTED; and this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION



John M. Frysiak  
Administrative Law Judge

**SETTLEMENT AGREEMENT**

THIS AGREEMENT is made this 10<sup>th</sup> day of July, 1997, by and between Central Coast Educational Broadcasters ("Central") and Pataphysical Broadcasting Foundation ("Pataphysical").

**WITNESSETH:**

WHEREAS, Central has an application (File No. BPED-950606MB) pending before the Communications Commission ("Commission") requesting authority to construct and operate a non-commercial FM broadcast station on Channel 217 (91.3 MHz) at King City, California; and

WHEREAS, Pataphysical has an application (File No. BPED-940316MB) pending before the Commission requesting authority to construct and operate a non-commercial FM broadcast station on Channel 219 (91.7 MHz) at San Ardo, California; and

WHEREAS, the applications of Central and Pataphysical are *mutually exclusive and have* been designated for hearing in MM Docket No. 97-79 pursuant to Hearing Designation Order, DA 97-380, released February 24, 1997, and are scheduled for hearing before Administrative Law Judge John M. Frysiak; and

WHEREAS, Central and Pataphysical desire to terminate the hearing proceeding by Central amending its application to relocate its transmitter northeast of King City, and by Central and Pataphysical jointly seeking a waiver of the signal strength overlap requirements of Section 73.509 of the Commission's Rules; and

WHEREAS, settlement of this proceeding will obviate the expense, delay and commitment of Commission resources and those of the parties otherwise necessary to resolve the pending applications through the comparative hearing process and will expedite new non-commercial radio broadcast services to the residents of San Ardo and King City, California and the surrounding areas; and

WHEREAS, the obligations of the parties hereunder are subject to the conditions set forth herein and to the prior approval of the Commission.

NOW THEREFORE, in consideration of the mutual promises and covenants herein contained, the parties agree as follows:

1. Central Amendment. Central agrees to petition the Commission for leave to amend its application to relocate its tower to a sparsely populated area to the northeast of King City, California, which will reduce the number of people subject to the overlap between Central's 80 dBu contour and Pataphysical's 60 dBu contour. Central and Pataphysical shall jointly seek a waiver of the adjacent channel signal strength overlap requirements of Section 73.509 of the Rules, such waiver request to be concurrently filed with this Agreement. Each party hereby agrees to accept any interference that will occur as a result of Central relocating its tower. Approval of this Agreement and waiver of Section 73.509 will serve the public interest by

allowing the operation of two new noncommercial educational stations and avoid the delay and expense of a comparative hearing.

2. Joint Petition. Within five days after the execution of this Agreement, the parties shall file such Agreement with the Commission together with a joint request for approval of such Agreement (the "Petition"). The Petition shall be filed pursuant to, and in compliance with, Section 73.3525 of the Commission's Rules and shall have appended thereto properly executed declarations substantially in the form of Exhibits A and B attached hereto. The Petition shall request that the Commission grant the following relief, all of which will be mutually contingent:

- (i) accept the Central amendment;
- (ii) grant a waiver of Sections 73.509 and 73.3522(b) of the Commission's Rules;
- (iii) grant the application of Pataphysical and the amended application of Central without imposing any materially adverse conditions on either party; and
- (iv) terminate the hearing proceeding.

3. Prosecution of Petition. This Agreement is expressly subject to the prior consent of the Commission. The parties shall cooperate and use their respective best efforts in the preparation and filing with the Commission of all documents as shall be necessary or appropriate to consummate the transactions contemplated by this Agreement. The parties shall prosecute such filings with all reasonable diligence and otherwise cooperate with each other and use their best efforts to obtain the requisite Commission consent and approval promptly so that a final order granting the relief requested in the Petition, including grant of the Pataphysical and amended Central applications, may be obtained no later than December 31, 1997. For purposes of this Agreement, Commission action approving the Settlement Agreement, approving the amendment of Central's application, granting the applications of Central and Pataphysical, and terminating the comparative proceeding, shall be deemed to have become a "final and unappealable order" when the time for filing a request for administrative or judicial review of the action, or for the Commission to review such action on its own motion, shall have expired without any such filing having been made or Commission action having been taken.

4. Entire Agreement. This Agreement is the only agreement between the parties hereto and contains all the terms and conditions agreed upon with respect to the subject matter hereof. This Agreement shall be binding upon the parties hereto, their successors and assigns.

5. Joint Representations. Each signatory to this Agreement warrants and represents that he has full authority to bind the party for whom he is signing. Each party represents that it has full legal authority to enter into, execute and carry out this Agreement in accordance with its terms and that this Agreement represents the binding obligation of each party.

6. Cost and Expenses. Each party shall be solely responsible for all costs and expenses incurred in connection with the preparation, filing and prosecution of its own application and its participation in and advocacy of this settlement.

7. Notice. Any notice required hereunder shall be written and shall be deemed given when mailed by first-class mail, postage prepaid, or by confirmed facsimile transmission, to the following:

To Central: Carl J. Auel, Trustee  
Central Coast Educational Broadcasters  
1601 Belvedere Road, 204 E  
West Palm Beach, FL 33406  
Fax: (407) 688-9601

copy to: Alan C. Campbell, Esquire  
Irwin, Campbell & Tannenwald, P.C.  
1730 Rhode Island Avenue, N.W., Suite 200  
Washington, D.C. 10036-3101  
Fax: (202) 728-0354

To Pataphysical: Mark Bernhard, President  
Pataphysical Broadcasting Foundation  
Box 423  
Santa Cruz, CA 95061  
Fax: (408) 476-2802

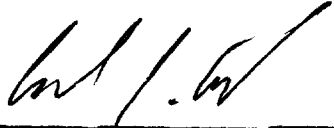
copy to: John Crigler, Esquire  
Haley Bader & Potts, P.L.C.  
4350 North Fairfax Dr., Suite 900  
Arlington, Virginia 22203-1633  
Fax: (703) 841-2345

8. Counterparts. The parties agree that this Agreement may be executed in counterparts, all of which together, so executed, shall constitute one and the same instrument.

*[Balance of Page Intentionally Left Blank]*

WHEREFORE, the parties have executed this Agreement as of the date first set forth above.

CENTRAL COAST EDUCATIONAL BROADCASTERS

By:   
Carl J. Auel  
Trustee

PATAPHYSICAL BROADCASTING FOUNDATION

By: \_\_\_\_\_  
Mark Bernhard  
President

WHEREFORE, the parties have executed this Agreement as of the first set forth above.

CENTRAL COAST EDUCATIONAL BROADCASTERS

By: \_\_\_\_\_  
Carl J. Auel  
Trustee

PATAPHYSICAL BROADCASTING FOUNDATION

By: Mark Bernhard  
Mark Bernhard  
President

## Exhibit A

DECLARATION

1. Central Coast Educational Broadcasters ("Central") is an applicant for a new non-commercial educational FM broadcast station on Channel 217A at King City, California (Application File No. BPED-950606MB).

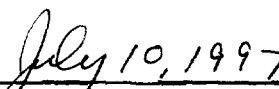
2. The Central application was not filed for the purposes of reaching or carrying out a settlement.

3. The universal settlement proposed in this proceeding would conserve the resources of the Commission and the applicants and will lead to an early institution of new noncommercial broadcast services at King City, California and San Ardo, California. Therefore, Commission approval of such universal settlement would be in the public interest.

4. The Settlement Agreement represents the entire agreement and understanding between Pataphysical Broadcasting Foundation and Central. No consideration has been paid or promised to be paid to or by Central, either directly or indirectly, except as set forth in the Settlement Agreement.

I hereby declare under penalty of perjury that the foregoing statements are true and correct.

  
\_\_\_\_\_  
Carl J. Auel, Trustee

  
\_\_\_\_\_  
Date

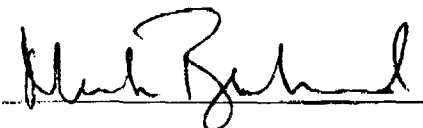


**Exhibit A****DECLARATION**

1. 'Pataphysical Broadcasting Foundation ("Pataphysical") is an applicant for a new noncommercial educational FM broadcast station on Channel 219B at San Ardo, California (Application File No. BPED-940316MB). 'Pataphysical's application is mutually exclusive with the application of Central Coast Educational Broadcasters ("Central") for a new noncommercial educational FM broadcast station on Channel 217A at King City, California (Application File No. BPED-950606MB).
2. The 'Pataphysical application was not filed for the purpose of reaching or carrying out a settlement.
3. The universal settlement proposed in this proceeding would conserve the resources of the Commission and the applicants and will lead to an early institution of new noncommercial broadcast services at San Ardo, California and King City, California. Therefore, Commission approval of such universal settlement would be in the public interest.
4. The Settlement Agreement represents the entire agreement and understanding between 'Pataphysical and Central. No consideration has been paid or promised to be paid to or by 'Pataphysical, either directly or indirectly, except as set forth in the Settlement Agreement.

I hereby declare under penalty of perjury that the foregoing statements are true and correct.

**'PATAPHYSICAL BROADCASTING  
FOUNDATION**

By: 

Date: 7-15-97, 1997